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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,812	09/15/2000	Andrew D. Murdin	032931/0235	1714

7590 12/17/2003  
Bernhard D Saxe  
Foley & Lardner  
3000 K Street NW  
Suite 500  
Washington, DC 20007-5109

EXAMINER

PORTNER, VIRGINIA ALLEN

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 12/17/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/662,812

Applicant(s)

MURDIN ET AL.

Examiner

Ginny Portner

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: new combinations of claim limitations, and new claims were submitted; see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: the arguments are directed to claims not entered after final.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 8,10,11 and 39.

Claim(s) withdrawn from consideration: 3-6,9,35-38,40 and 41.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: see USPTO-948, interview summary

Art Unit: 1645

For at least the following reasons the Amendment After Final submitted September 28, 2003 has not been entered:

- a. Independent claim 8 has been proposed to the term “a promoter” together with a combination of claim limitations that read on a natural intracellular mammalian pathogen, such as Chlamydia, because the “nucleic acid” in the claim is not heterologous to the claimed vector, and therefore reads on a product of nature. Entry of the proposed amendment of claim 8 would raise a new issue after final.
- b. Claim 9 is proposed to be amended to depend from claim 38, which is proposed to depend from independent claim 8; both claims 9 and 38 not previously having been considered but are withdrawn claims; both claims NOT having been finally rejected. Amended claims 9 and 38 would raise new issues After Final.
- c. Examined claim 39 is proposed to be canceled, the cancellation not raising a new issue, but was canceled so claim 38 could be amended. Consideration of claim 38 After Final would raise a new issue.
- d. New claims 42-45 are proposed which recite claim limitations not previously considered on the record prior to the Final Action; claims 42-45 have not been entered.

**General Comments:** An effort was made by both Applicant's Representative and the Examiner to place the instant Application in condition for allowance, but agreement, on a combination of claim limitations that define over the prior art of record and do not raise new issues requiring further consideration or search, was not reached.

*Drawings*


2. Please see attached USPTO-948.
3. The proposed drawing changes are confusing in light of the various labels set forth in the drawing not being internally consistent, and being clearly described in the brief description of the drawings. Applicant should point out where in the instant specification support for the proposed changes is found in the instant specification to avoid a New Matter Rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (703) 308-7543. The examiner can normally be reached on 7:30-5:00 M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703)308-3909. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0196.

Vgp  
December 9, 2003

  
NTA MINNIFIELD  
PRIMARY EXAMINER  
12/11/03